

FEDERAL DISTRICT COURT
WESTERN MASSACHUSETTS DISTRICT
(SPRINGFIELD, MASSACHUSETTS)

Rinaldo Del Gallo, III
Plaintiff,

v.

Boston Mayor Marty Walsh, in his personal
and professional capacity

Boston Police Commissioner William B.
Evans, in his personal and professional
capacity

Boston Parks and Recreation Department
Commissioner Christopher Cook, in his
personal and professional capacity

An unknown Boston Police Officer with
badge number 2578, in his personal and
professional capacity

An unknown Boston Police Officer with
badge number 16, in his personal and
professional capacity

Boston Police Officer Captain Greeland¹
Badge Number 10

Any one of approximately 300 Unnamed John
and Jane Doe Police Officers at the Boston
Free Speech Rally manning the gates or on
the grounds or who interacted with Rinaldo
Del Gallo, that would not allow Rinaldo
Del Gallo in to speak despite being asked
to be allowed into speak, or any
supervising Police Officers, in their
personal and professional capacities,
whose names will be determined in
discovery.

The City of Boston

Defendants

17CV30167-MAT

MOTION FOR AN EXTENSION OF TIME
To DEFENDANT'S 12(B) (6) MOTION

U.S. DISTRICT COURT
DISTRICT OF MASS.

2018 FEB 16 PM 12: 56

FILED
IN CLERKS OFFICE

U.S. DISTRICT COURT
DISTRICT OF MASS.

2018 FEB 20 PM 12: 46

FILED
IN CLERKS OFFICE

¹ The spelling of "Greeland" is a guess.

1 Recently, the defendants have filed a 12(b)(1) and a 12(b)(6)
2 motion. I actively researching the issues and I am bogged down
3 in some other cases.

4 I was hoping this court would grant me an additional month to
5 file a reply brief in opposition. (I can state here that I
6 oppose the motion. I will be making the following points in
7 greater detail:

8 As for the motion of the City of Boston:

- 9 • In a *Monell* claim² where a plaintiff is alleging that the
10 municipality had a policy, such policy can be *inferred*³ from
11 the circumstances without being privy to the words being
12 spoken.
- 13 • The facts of this case are unique. It is true that there
14 is such a thing as a "single incident" *Monell* case,⁴ but

15 ² One court in 2012 put the test as such: "The existence of a
16 municipal policy or custom may be pled in any of four ways. A
17 plaintiff may allege that his constitutional injuries arose from: "(1)
18 the existence of a formal policy officially endorsed by the
19 municipality; (2) actions taken or decisions made by municipal
20 officials with final decision making authority, which caused the
21 alleged violation of plaintiff's civil rights; (3) a practice so
22 persistent and widespread that it constitutes a custom of which
23 constructive knowledge can be implied on the part of the policymaking
24 officials; or (4) a failure by policymakers to properly train or
25 supervise their subordinates, amounting to 'deliberate indifference'
26 to the rights of those who come in contact with the municipal
27 employees." *Sorrell v. Inc. Vill. of Lynbrook*, No. 10 CV 49 DRH GRB,
2012 WL 1999642, at *7 (E.D.N.Y. June 4, 2012)

28 ³ For instance, with regard to *inferring* there was a policy, it
has been said by this court, "*Monell* has ... been interpreted to hold
that a municipal policy of authorizing or condoning police misconduct
can be inferred where the municipality has been grossly negligent in
the supervision and training of its police force.... [I]solated
incidents of negligent training or supervision are insufficient to
establish." *CITY OF SPRINGFIELD, Massachusetts, Petitioner, v. Lois
Thurston KIBBE, etc., Respondent.*, 1986 WL 728319 (U.S.), 13

29 ⁴ "A number of courts have held that where the single act or
30 omission is sufficiently egregious, a municipal policy or custom may
be inferred (see § 4[b]). Thus, in a number of cases involving
allegations of isolated instances of law enforcement officers'

1 this is not really a "single incident." Normally, a
 2 citizen goes out and interacts with one or just a few
 3 people acting under color of state law, and there may be a
 4 "single incident." That is not the case. With regard to
 5 the day in question, I was denied entry by dozens upon
 6 dozens of police officers. Not only is this case properly
 7 categorized as a "widespread practice" or "multiple-
 8 incident case," the very idea that dozens upon dozens of
 9 police officers were not acting on an order from above and
 10 all were coincidentally denying me access to speak at the
 11 Boston Free Speech Rally is frankly a fatuous proposition—I
 12 am not trying to be sarcastic—they have literally argued
 13 these officers were not acting under a common policy.

14 As for the 12(b)(1) and 12(b)(6) motion of the Mayor, Police
 15 Commissioner, Parks Commissioner:

- 16 • It will be shown at the discovery phase that the Mayor of
 17 Boston, the Police Commissioner, and the Park's
 18 Commissioner made orders that:
 - 19 ○ There would be no amplified sound.⁵
 - 20 ○ That media would not be allowed into the Parkman
 21 Bandstand.
 - 22 ○ That guest of the Boston Free Speech Rally would not
 23 allowed in the immediate area.
- 24 • The Defendants evidently argued that "the right to be
 25 heard" is not a real right, and that I am arguing the right
 26 of third parties (and ergo have no standing) when I
 27 complain that even if I were allowed to go into the Parkman
 28 Bandstand, the media was not allowed to cover it or that
 people could not hear it—I will argue otherwise.⁶

misconduct, courts have inferred the existence of a municipal policy
 or custom." 81 A.L.R. Fed. 549 (Originally published in 1987)

⁵ The Mayor said on national television that there will no sound
 amplification. "Charlottesville Aftermath: Boston Prepping For Free
 Speech Rally | MTP Daily | MSNBC. I will be asking the court to take
 judicial notice of this television story.

<https://www.youtube.com/watch?v=jeF0eZOvBfM&feature=youtu.be>

⁶ By now, there is a "clearly established right to assemble, to
 protest, and to be heard while doing so." *Amnesty Int'l v. Battle*,

- The statement that "Plaintiff never attempted to speak at the rally" (page 10) is obviously not assuming the facts asserted in the complaint to be true as is required in a 12(b)(6) motion for failure to state a claim, but is completely belied by the video tape that I gave them with me going around to police officers and being asked to be let in—and this video is on file with this court on CD.
- The argument—actually argued by the Defendants—that since I was not allowed to speak because the police denied me entry to the Boston Free Speech Rally, I lacked standing to complain about the additional injuries of not being allowed to be covered by the media or have amplification if I was allowed to speak is not sound. The argument has a certain amount ofchutzpah, because they are literally trying to benefit from their own wrong:⁷ who am I to complain for not being allowed to speak to the media or have amplification in the Parkman Bandstand when I was not allowed to enter the Parkman Bandstand and speak in the first place? You cannot benefit from your own wrong like that. You cannot shoot a guy in the head and the heart, and claim that the shot to the head was no foul because the shot to the heart would have killed him, and claim that the shot to the heart was no foul because the shot to the head would have killed him. I have standing to argue that even were I allowed to enter the Parkman Bandstand, I was still being prevented from being heard save for the small group of people in the Parkman Bandstand because there was no sound, the audience

559 F.3d 1170, 1185 (11th Cir. 2009) ("It is now well-established that "police may not create a police cordon that makes a protest rally totally ineffective," *Amnesty Int'l v. Battle*, 559 F.3d 1170, 1185 (11th Cir. 2009), yet this is exactly what the defendants did—the isolated the speakers. "It is now well established that the Constitution protects the right to receive information and ideas. 'This freedom [of speech and press] . . . necessarily protects the right to receive'" *Kleindienst v. Mandel*, 408 U.S. 753, 762-763 (1972) "**[T]he First Amendment carries with it a 'right to be heard' that should not be infringed.**" *Amnesty Int'l v. Battle*, 559 F.3d 1170, 1182 (11th Cir. 2009); *Saia v. New York*, 334 U.S. 558 (1948) (striking down a vague ordinance which outlawed amplification from a motor vehicle so the speaker could be heard. "**There is a First Amendment right to be heard by the audience of [one's] choosing.**" *Natural Resources Defense Council v. Pena*, 147 F.3d 1012, 1019 (Fed. D.C. Court of Appeals 1998).

⁷ This probably accounts for the someone bizarre claim that "Petitioner never attempted to speak at the rally."

1 members were not allowed nearby, and that media was not
2 allowed in.

- 3 • The defendant's also state that a viewpoint
4 discrimination case has not been stated. The Mayor kept
5 calling the speakers and organizers haters and speakers,
6 and this was pled in the complaint. They were treated
7 differently from favored speakers, such as President Obama
8 and future governor Deval Patrick, who were allowed sound
9 and were not kept from their audience. The Mayor
10 constantly referred to the organizers and speakers as
11 haters, white supremacist and the like, and it was
12 adequately plead that for this reason, the Boston Free
13 Speech Rally was treated differently than other speakers.
- 14 • I am the master of my claims. It is unfair and improper to
15 twist my words and make a straw-man argument that I am not
16 making. I am not "asserting a claim on behalf of the
17 press." I am asserting the straightforward proposition
18 that I have a right to be heard by the press, and the state
19 cannot interfere with that right. The injury would
20 certainly be to me and the press, and arguably the people
21 that want to hear the message. If you suffer an injury, you
22 have standing. When I was deprived of media, when I was
23 deprived of amplification, when I was deprived of an
24 audience close enough so that I could be heard (and I don't
25 mean the protestors), I was injured—nor can any of this be
26 circumvented by the argument that since I was unlawfully
27 prevented from entering, these also did not constitute real
28 injuries.
- The whole of the 12(b)(6) motion lacks merit. They are
actually arguing that even if it were true as alleged in
the complaint that dozens upon dozens of police officers
would not allow me to enter the Parkman Bandstand to speak
at the Boston Free Speech Rally as I repeatedly made my way
around the fenced perimeter, and even if it were true that
had I got in, the audience would not have been able to hear
me because the speakers were not allowed a microphone other
than a bullhorn, and even if it were true that the (non-
protesting) audience was not allowed to hear because they
were barricaded so far away, and even if it were true that
I would not be heard by the media because they were not
allowed in the Parkman Bandstand, and even if it were true
that all these measures were taken because the Mayor of
Boston did not like what he perceived to be the viewpoint
of the speakers, that I have not stated a cause of action.

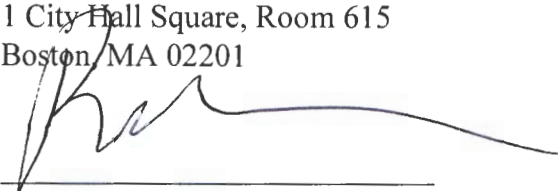
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2 As stated, I have been in the weeds and I want to time to
3 present a more cogent case.
4

5
6 I hereby move for an extension of time of one month to
7 fully respond to the 12(b)(6) motion. I have communicated on
8 Wednesday, February 14, 2018 with Attorney Nicole O'Connor and
9 she has e-mailed me, "I wouldn't oppose a 2 week extension of
10 time."
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16 Rinaldo Del Gallo, III February 14, 2018
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1 CERTIFICATE OF SERVICE:

2
3 I, Rinaldo Del Gallo hereby certify that a copy of this motion was e-mail to:
4
5 nicole.oconnor@boston.gov on Wednesday, February 14, 2018. I also certify that it
6 was mailed to:
7

8 Nichole O'Connor
9 Corporation Counsel for the City of Boston
10 1 City Hall Square, Room 615
11 Boston, MA 02201
12 

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